

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9554 of 2015

M/s Ram Pravesh Rai Estate Private Limited through its Managing Director,
Ram Pravesh Rai, s/o late Kamla Rai, resident of 19, Patliputra Colony,
Patna-800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Mines Commissioner-cum-Principal Secretary, Department of Mines & Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Mines Commissioner-cum-Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Collector, Nawada.
4. The Deputy Director-cum-Appellate Authority, Mines and Minerals Department, Magadh Division, Gaya.
5. The Director, Department of Mines and Geology, Government of Bihar, Patna.
6. The Assistant Director, Department of Mines and Geology, Government of Bihar, Patna.
7. The Superintendent of Police, Nawada.
8. The Sub-Divisional Officer, Rajauli, Nawada.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13136 of 2015

M/s Ram Pravesh Rai Estate Private Limited through its Managing Director,
Ram Pravesh Rai, s/o Late Kamla Rai, resident of 19, Patliputra Colony,
Patna-800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Mines Commissioner-cum-Principal Secretary, Department of Mines & Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Mines Commissioner-cum-Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Collector, Nawada.
4. The Deputy Director-cum-Appellate Authority, Mines and Minerals Department, Magadh Division, Gaya.
5. The Director, Department of Mines and Geology, Government of Bihar, Patna.
6. The Assistant Director, Department of Mines and Geology, Government of



Bihar, Patna.

7. The Superintendent of Police, Nawada.
8. The Sub-Divisional Officer, Rajauli, Nawada.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 9554 of 2015)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Ashuthosh Nath, Advocate
Mr. Binod Kumar Singh, Advocate

For the State : Mr. Rakesh Kumar Ranjan, AC to GA-5

For Mines Department : Mr. Naresh Dikshit, Spl. PP

(In Civil Writ Jurisdiction Case No. 13136 of 2015)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Ashuthosh Nath, Advocate
Mr. Binod Kumar Singh, Advocate

For the State : Mr. Shashi Shekhar Kr. Prasad, AC to PAAG-2

For Mines Department : Mr. Naresh Dikshit, Spl. PP

**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT**

Date : 19-04-2019

Both the writ applications have been filed for issuance of writ of *certiorari* or writs in the nature thereof or any other appropriate writs/orders/directions for quashing part of common order dated 11.05.2015 passed in Revision Case Nos.26 of 2012 & 14 of 2013 by the Mines Commissioner, Department of Mines & Geology, Government of Bihar, whereby and whereunder only remission of the auction amount for the corresponding period during which the Petitioner could not do the mining operation in his lease area is allowed and further directed to take necessary action against the illegal doers and realize the government revenue so involved as per provision of law in the light of Inspection Report.



2. The Petitioner had moved in Revision Case No.26 of 2012 & 14 of 2013 before the Mines Commissioner, Bihar, against the order dated 05.03.2012 of the Collector, Nawada, whereby and whereunder the lease dated 23.11.2018 was terminated and the amount deposited was forfeited in respect of Plot No.01 (Parts), Block No.21, Area 2 Acres in Mauza Khakhandua on the basis of *ex-parte* report dated 03.04.2010. A Xerox copy of the order passed in Revision Case No.26 of 2012 & 14 of 2013 by the Mines Commissioner, Bihar, against the order dated 05.03.2012 of the Collector, Nawada, is enclosed as Annexure-1 to the writ petition (CWJC No.9554 of 2015).

3. Counsel for the Petitioner submits that pursuant to the notice bid was invited under Rules 22-A and 52 of the Bihar Minor Mineral Concession Rules, 1972, for granting the mining lease of all the tract of lands situated at Mauza-Khakhandua, P.S. & Circle- Govindpur, District- Nawada, Area two acres bearing Thana No.309, Cadastral Survey Block No.21, Plot No.01(P). It is also submitted that after completing due formalities as per law a formal registered lease deed of mining for minor minerals in prescribed format Form-D was executed on 23rd November, 2008, before the registering authority with the signature of the Collector, Nawada, and Assistant Director, Mines and Minerals Department,



Nawada, on behalf of Governor of Bihar, and Ram Pravesh Rai Estate Private Limited through its Director, Ram Pravesh Rai (Petitioner) registered under the Companies Act, 1956.

4. The Petitioner was handed over possession of the lease area after demarcation upon execution of the mining lease deed for minor minerals vide Annexure-3. The Inspector, Mines, Nawada, was entrusted with the responsibility to demarcate the lease area after carrying out the due measurement. He was also entrusted to hand over possession of the lease area in terms of the lease deed to the Petitioner. The Inspector, Mines, Nawada, demarcated the lease area and handed over possession of the demarcated area to the Petitioner for the purpose of carrying out mining operation.

5. The Additional Collector, Nawada, vide Letter No.256 dated 27.04.2010 gave notice to the Petitioner and two others for illegal mining in 14.40 acres of Plot No.01(P) situated in Mauza-Khakhandua. Show cause was asked from the Petitioner and two others within 30 days stating that it is violation of Sections 4 & 21 of the Mines & Minerals (Development & Regulation) Act, 1957, and also violation of Rules 4 & 40 of the Bihar Minor Mineral Concession Rules, 1972, including violation of clause 2 & 23, Part VIII of Mining lease. Copy of the Letter



No.256 dated 27.4.2010 issued by the Additional Collector, Nawada, is enclosed as Annexure-4 to the writ petition (CWJC No.9554 of 2015).

6. The Petitioner by letter dated 26.05.2010 gave reply to the Additional Collector, Nawada, as well as to the Assistant Director, Mines, Nawada, stating that letter was sent on the address given by the Petitioner in its letter dated 04.03.2010. It is also submitted that the allegations regarding illegal mining over an area of 14.40 acres of plot No.01 (P) is baseless, false and fabricated. The allegations are based on the joint report dated 03.04.2010 of Mines Inspector, Nawada, and *Anchal Amin*, Govindpur. Copy of report of measurement had not been made available to the Petitioner. The Petitioner had no knowledge about such measurement as mentioned in Annexure-2. Such *ex-parte* measurement has no legal value. The Petitioner prayed that measurement should be made in his presence by authorized *Amin* of the Petitioner as well as *Amin* of the State Government and Mines Inspector and thereafter approved lease property be demarcated to avoid unnecessary dispute. Copy of the show cause dated 26.05.2010 filed by the Petitioner before the Additional Collector, Nawada, and Assistant Director, Mines, Nawada, is



enclosed as Annexure-5 to the writ petition (CWJC No.9554 of 2015).

7. All the concerned authorities including the Additional Collector, Nawada, and Assistant Director, Mines, Nawada, accepted the show cause. It is also submitted that whatever demarcation was made by the concerned authority in Plot No.01 (P) of Mauza- Khakhandua, as per lease deed of the Petitioner, was deemed to have been accepted as correct demarcation so far as the Petitioner is concerned. Some other persons have also been allotted different portion out of the same plot under different lease deeds.

8. The Assistant Director, Mines, Nawada, again issued Letter No.508 dated 23.07.2011 for fixing sign board and for demarcating the lease property. The Petitioner vide Letter No.74 dated 11.08.2011 replied that it should be done in presence of both parties so that there should not be any dispute in the future. The Assistant Director, Mines and Minerals Department, made a report to the Officer-in-Charge of Govindpur P.S. vide Letter No.585 dated 16.08.2011 against the Petitioner under Section 379 Indian Penal Code and Sections 4 & 40 of Bihar Minor Mineral Concession Rules, 1972, although, Petitioner was not extracting stones from Block 21 area 14.40 acres. Thereafter, the Assistant



Director, Mines, Nawada, by its Letter No.649 dated 21.09.2011 demanded Rs.8,81,860/- from the Petitioner for the alleged illegal mining of 2,46,440 cubic feet. The Petitioner preferred appeal before the Deputy Director, Mines & Minerals, Magadh Division, Gaya, on 20.10.2011.

9. The Deputy Director, Mines & Minerals, Magadh Division, Gaya, did not decide the appeal in spite of direction of the Director given in Revision Case No.24 of 2012 vide Memo No.1683 dated 26.06.2012, rather, by order dated 10.07.2012, the Deputy Director, Mines, Magadh Division, Gaya, directed the Petitioner to move before the Certificate Officer, Mines, Magadh Division, Gaya, and failed to exercise its jurisdiction.

10. Counsel for the Petitioner submitted that First Information Report was lodged without any report. The Assistant Director, Mines, Nawada, gave another Letter No.774 dated 08.11.2011 asking show cause for initiating proceeding with regard to cancellation of lease deed and for not making payment of Rs.8,81,860/-. The Petitioner preferred appeal against the aforesaid order before the Deputy Director cum Appellate Authority, Mines & Minerals Department, Magadh Division, Gaya, which was decided in complete violation of the order of Mines Commissioner passed in Revision Case No.24 of 2012.



11. Counsel for the Petitioner has submitted that Collector, Nawada, has terminated lease of the Petitioner on the basis of imaginary, in correct, *ex-parte* report dated 03.04.2010 of the *Anchal Amin*, Govindpur, and the Mines Inspector, Nawada, on the ground that Petitioner had done illegal mining and the auction money of the Petitioner was forfeited.

12. Counter Affidavit has been filed on behalf of the Respondents stating Khakhandua village was not granted No Objection Certificate by the Forest Department, which is clear from Letter No.1676 dated 22.07.2013 of the Divisional Forest Officer, Nawada, addressed to the District Magistrate, Nawada, with an enclosure mentioning that Khakhandua is not fit for being settled for mining of stone. Xerox copy of the Letter No.1676 dated 22.07.2013 is enclosed as Annexure- A to the Counter Affidavit.

13. The Mines Commissioner was in full knowledge of the aforesaid fact and, therefore, has mentioned in the impugned order that all the areas of Nawada district had been settled meaning thereby that entire area is free for the purpose of settlement had been settled.

14. It has further been submitted in the Counter Affidavit filed on behalf of the Respondents dated 14.10.2015 that Petitioner



was granted mining lease over Block No.21, Plot No.01 over an area of 2 acres in Mauza Khakhandua and the lease deed was executed in his favour and possession was handed over to him. The respondent authorities after joint inspection by Mines Inspector, Nawada, and *Amin*, Nawada, submitted report that the Petitioner and other settlees of Plot No.01 (P) were illegally excavating the mines in the nearby plots, which was in clear violation of Mines and Mineral Concession Rules, 1972. A show cause was asked on 27.04.2010 vide Annexure-4 to the writ petition (CWJC No.9554 of 2015). On 27.03.2011, the Petitioner was directed to install demarcating points of his lease hold area as it was found that there was no boundary pillars demarcating the lease area affixed by the Petitioner and, therefore, the Petitioner was indulged in illegal mining beyond his settled area.

15. It is further submitted in the Counter Affidavit that despite such notice the Petitioner was doing illegal mining and as such, First Information Report being Govindpur P.S. Case No.60 of 2011 was registered. Demand notice was also issued to the Petitioner vide Letter No.640 dated 21.09.2011 for payment of Rs.8,81,860/- on account of illegal mining of 2,46,440 cubic feet stone mixed out from the neighbouring area outside his lease hold area. The Petitioner preferred an appeal before the Deputy



Director, Mines, Magadh Division, Gaya, in which Petitioner was directed to appear before the Certificate Officer, Gaya, and file his objection as Certificate Case had been initiated against the Petitioner for realization of government money.

16. It has also been submitted in the Counter Affidavit that Petitioner continued the illegal mining and one enquiry team was constituted on the order of the District Magistrate, Nawada, who submitted its inspection report that the Petitioner in his lease area and beyond his lease area has excavated illegal stone of about 2,46,440 cubic feet, which is in violation of provisions of Mines & Minerals (Development & Regulation) Act, 1957, and the Bihar Minor Mineral Concession Rules, 1972. Therefore, demand notice for payment of Rs.8,81,860/- as additional royalty was raised against the Petitioner vide Annexure-12 series to CWJC No.9554 of 2015. The Petitioner failed to deposit the same. Thereafter, certificate proceeding was initiated against him for realization of due public money vide Annexure-13 to CWJC No.9554 of 2015.

17. It has further been submitted in Counter Affidavit that by order of the District Magistrate, Nawada, an extensive measurement and demarcation of Khakhandua Hill was done from 14.08.2011 to 03.09.2011 and a batch of Officers and persons were engaged in the said work. The report was submitted vide



Annexure-15 to the CWJC No.9554 of 2015 and it was found that Petitioner was illegally mining beyond his lease area for which demand notice was also sent and First Information Report was also lodged. The Petitioner was directed to stop the mining activities vide Letter No.256 dated 27.04.2010.

18. It has also been stated in the Counter Affidavit that during enquiry and verification of Khakhandua Hill, illegal mining by the Petitioner shows malafide intention of the Petitioner for which demand notice was issued and First Information Report was also instituted. It has also been stated that during hearing of Revision Case No.26 of 2012 and 14 of 2013, field enquiry was done and it was found that unsettled area of 13.50 acres adjacent to the Petitioner's lease has been excavated illegally by several persons.

19. During pendency of the writ application, I.A. No.01 of 2019 was filed by the Petitioner stating that Petitioner was granted mining lease over Block No.21, Plot No.01 (New Block-B) over an area of 2 acres in Mauza- Khakhandua over a lease deed for five years on 23.11.2008. The Petitioner was handed over the possession of the same, but the Petitioner was allowed to work upon the said lease area only for two years out of five years. The respondent State had E-auctioned the impugned plot and had



created a third party interest over those plots. Lease of the Petitioner was suspended on 03.04.2010 and the Petitioner was restrained from continuing the mining process on the leased plot. The Mines Commissioner, Bihar, in Revision Case No.26 of 2012 and 14 of 2013 was pleased to set aside the cancellation of lease order rejecting all the allegations against the Petitioner of performing illegal mining but refused to reinstate the Petitioner's lease as the period of five years had expired during the enquiry and litigation.

20. During pendency of the present writ application(s), the Department of Mines and Geology, Govt. of Bihar, issued a notice for E-auction through e-tendering of the impugned plot of leased hold area in New Block A and B (Old Block No.21, Plot No.01) at Khakhandua, Nawada. The date of initiation of the E-auction had been fixed on 27.11.2018 and the date of auction was fixed on 10.12.2018. E-auction was concluded on 10.12.2018 and the plots impugned were allotted in the said E-auction to a third party as a part of Block-B in Mauza- Khakhandua, Nawada.

21. Counsel for the Petitioner has further submitted in the interlocutory application that the respondent State has already E-auctioned the impugned plots knowing fully well that 2 acres out of the total 16 acres being auctioned were under consideration by



Hon'ble Court in CWJC No.9554 of 2015 and CWJC No.13136 of 2015. The Petitioner has, therefore, made prayer for compensation of the loss incurred because of the illegal acts of the Respondents. It has been submitted that amount of compensation may proportionately be calculated on the basis of the amount the respondent received from the auction of the Plot-B, Khakhandua, Nawada, having total area of 16 acres. The Petitioner has given formula for finding out proportionate compensation amount in para 7 of the I. A. No.01 of 2019.

22. Counsel for the Petitioner has submitted that the Respondents, who leased out the said area of 2 acres for five years to the Petitioner in the year 2008, have levelled baseless allegation of illegal mining upon the Petitioner and lease of the Petitioner got suspended in 2010, and finally terminated the lease in 2015. The Respondents even after setting aside the termination order denied restoration of the Petitioner for remaining three years upon the leased land. During pendency of the writ petition(s), the Respondents have auctioned the concerned plot and created a third party interest over the said plot. Therefore, the Petitioner deserves to be compensated appropriately or alternatively, reinstatement over the said plot of 2 acres for the remaining period of three years



as the principles of *lis pendence* also applies over the aforesaid auction.

23. Reply to the aforesaid Interlocutory Application has been filed by the Mines Department by filing supplementary Counter Affidavit stating therein that Block-A and Block-B of Mauza Khakhandua has, now, been settled in favour of one Rajendra Singh for Block-A and in favour of Patel Agri Industries Pvt. Ltd. for Block-B and letter to that effect has been issued vide Letter No.1701 dated 31.12.2018 for Block-A and Letter No.1702 dated 31.12.2018 for Block-B under the signature of Collector, Nawada. Xerox copy of letter No.1701 dated 31.12.2018 and Letter No.1702 dated 31.12.2018 have been annexed as Annexure-C and D to supplementary Counter Affidavit.

24. In such manner, after hearing cases of both parties and perusing the revision order dated 11.05.2015 passed in Revision Case No.26 of 2012 and 14 of 2013, it appears that Mines Commissioner, Bihar, has found the cancellation of mining lease of the Petitioner was not proper and, accordingly, set aside the cancellation order. But, after considering the order of the Hon'ble Supreme Court dated 27.02.2012 passed in SLP (C) No. 19628-19629 of 2009 in the case of *Deepak Kumar Vs. The State of Haryana*, which provides for a minimum lease area of 5



hectares along with mandatory provisions of mining plan and environmental clearance being made a mandatory requirement for any mining operation in a mining lease, has refused to allow mining operation even for a short period. The Mines Commissioner has, however, allowed remission of the auction amount for the corresponding period during which he could not do the mining operation in his lease area.

25. Counsel for the Petitioner has submitted that since lease area has already been E-auctioned, he is only making prayer for due compensation for not allowing him to continue mining operation for the remaining period of his lease, which has been illegally terminated as held by Mines Commissioner, Bihar, in the impugned order dated 11.05.2015.

26. In support of his submission, he has relied on the decisions of our own High Court in the case of *Bhola Sharma vs. The State of Bihar* reported in 2011(4) PLJR 498, *M/s Maa Durga Enterprises Vs. State of Bihar & ors.* reported in 2009(2) PLJR 1000 and *Koshmi Devi & Anr. Vs. State of Bihar & Ors.* reported in 2014(1) PLJR 19.

27. The Respondents have also relied on the decision of the Hon'ble Supreme Court in the case *Chairman, Grid Corporation of Orissa Ltd. Vs. Smt. Sukamani Das* reported in



(1999) 7 SCC 298, and *SDO, Grid Corporation of Orissa Ltd. & Ors. Vs. Timudu Oram* reported in *(2005) 6 SCC 156* in support of his submission and submitted that aforesaid disputed question of fact cannot be decided under Article 226 of the Constitution of India.

28. This Court finds that termination of lease of the Petitioner was held to be illegal by the Mines Commissioner, Bihar, by order dated 11.05.2015. The Mines Commissioner, Bihar, has allowed for remission of auction amount for the corresponding period during which mining operation could not be done in the lease area of the Petitioner. He has, however, refused to allow mining operation even for a short period.

29. This Court finds that remission of the auction amount for the corresponding period during which the Petitioner could not do the mining operation in the lease area is not sufficient compensation to the Petitioner for the action done by the Respondents by which lease of the Petitioner was cancelled, which was held to be not proper by the Mines Commissioner, Bihar. The Mines Commissioner, Bihar, after relying on the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar Vs. State of Haryana* has not passed any order in favour of the Petitioner with regard to mining for the remaining period of lease.



30. The Hon'ble Supreme Court in the aforesaid judgment reported in *(2012) 4 SCC 629 [Deepak Kumar and ors. Vs. State of Haryana and ors.]* has issued direction to the State and Union Territory to take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, taking into consideration the recommendation of MoEF in its report of March, 2010, and model guidelines framed by the Ministry of Mines, Govt. of India.

31. The Petitioner has given formula for finding out the proportionate compensation amount in para 7 of the I.A. No.01 of 2019. This Court finds itself not competent to adjudicate all such disputed question of facts under Article 226 of the Constitution of India.

32. The Petitioner is, however, directed to file necessary representation before the Collector, Nawada, incorporating all details as mentioned in I. A. No.01 of 2019, making prayer for proportionate compensation for the period during which he was not allowed to continue the mining operation in the lease area subsequent to termination of lease of the Petitioner, which was found to be not proper by the Mines Commissioner, Bihar, in the impugned order dated 11.05.2015 as contained in Annexure-1.



33. In the facts and circumstances, this Court is not inclined to interfere with the impugned order dated 11.05.2015 passed in Revision Case Nos.26 of 2012 & 14 of 2013 passed by the learned Mines Commissioner, Department of Mines & Geology, Government of Bihar.

34. The Petitioner will file appropriate application before the Collector, Nawada, for grant of proportionate compensation, as ordered above, within a period of one month from the date of passing of this judgment, which shall be considered and disposed off by the Collector, Nawada, in accordance with law by a speaking order within a period of three months from the date of filing of the same.

35. Both the writ applications are, accordingly, disposed off.

(Sanjay Priya, J)

J. Alam/-

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